

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
BEFORE THE HONORABLE ARTHUR S. WEISSBRODT, JUDGE

In Re:	) Case No. 07-52890-ASW
	) Chapter 11
THE BILLING RESOURCE, dba	)
Integretel, a California	) R.S. JLF-001
corporation,	) <u>MOTION for RELIEF from</u>
	) <u>STAY by LSI CORPORATION</u>
Debtor.	)
	)
THE BILLING RESOURCE,	) Adv. No. 07-5156
	)
Plaintiff,	) <u>PLAINTIFF'S MOTION for</u>
	) <u>ORDER to SHOW CAUSE</u>
v.	) <u>REGARDING PRELIMINARY</u>
	) <u>INJUNCTION re ORDER to STAY</u>
DAVID R. CHASE, Federal Receiver,	) <u>ENFORCEMENT of OMNIBUS ORDER</u>
et al.,	)
	)
Defendants.	) Wednesday, November 21, 2007
	) San Jose, California

Appearances:

For the Debtor and Plaintiff/Movant (via telephone in the afternoon):	Steven B. Sacks, Esq. Sheppard Mullin Richter & Hampton Four Embarcadero Center, 17 <sup>th</sup> Floor San Francisco, California 94111-4109
For the Committee (via telephone):	Maxim B. Litvak, Esq. Pachulski Stang Ziehl Young & Jones 150 California Street, 15 <sup>th</sup> Floor San Francisco, California 94111-4500
For the Committee (via telephone):	John D. Fiero, Esq. Pachulski Stang Ziehl Young & Jones 3 Embarcadero Center, Suite 1020 San Francisco, California 94111-5994
From the Federal Trade Commission (via telephone):	John Singer, Attorney Michael Mora, Attorney 600 Pennsylvania Avenue, N.W. Washington, D.C. 20580

Appearances continued on next page.

Appearances:

For the Federal  
Receiver, David R.  
Chase:

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Danning, Gill, Diamond & Kollitz, LLP  
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For LSI Corporation:

Jenny Fountain, Esq.  
Robert A. Franklin, Esq.  
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For the Owner of the  
Property:

David M. Wiseblood, Esq.  
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From the Federal  
Trade Commission  
(via telephone):

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*Motion for Order to Show Cause re Preliminary Injunction*

3

1 Wednesday, November 21, 2007

10:58 o'clock a.m.

2 P R O C E E D I N G S

3 THE COURT: Oh, that's Billing Resource, fine. Okay.  
4 That makes sense now.

5 MS. FOUNTAIN: Good morning. Jenny Fountain and Bob  
6 Franklin of Murray and Murray for LSI Corporation.

7 THE COURT: Good morning.

8 MR. SACKS: Good morning. Steven Sacks, Sheppard  
9 Mullin, for the debtor.

10 THE COURT: Good morning.

11 MR. WISEBLOOD: Good morning, Your Honor. David  
12 Wiseblood appearing on behalf of the owner of the property and  
13 interested party. Just listening in this morning.

14 THE COURT: Good morning, Mr. Wiseblood.

15 MR. LITVAK: Good morning, Your Honor. Max Litvak  
16 with Pachulski Stang for the Creditors' Committee.

17 THE COURT: Can you tell me your last name?

18 MR. LITVAK: Sure, Your Honor. Litvak, L-i-t- -

19 THE COURT: Oh.

20 MR. LITVAK: - -v-a-k. Good to meet you.

21 THE COURT: Nice to meet you. You're not a Goltziana;  
22 you're a Litvak? You don't know what that means?

23 MR. LITVAK: No.

24 THE COURT: You don't know the distinction? Can you  
25 write it down? Write down Litvak and Goltziana, and then go

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1 back to your firm and ask them what it means.

2 MR. LITVAK: Okay.

3 (Laughter.)

4 MR. LITVAK: Let me write – homework –

5 THE COURT: Can you write –

6 MR. LITVAK: – assignment.

7 THE COURT: Can – yeah, homework assignment.

8 MR. LITVAK: Okay.

9 THE COURT: And no written memo back.

10 (Laughter.)

11 THE COURT: But Litvak and Goltziana; do you have  
12 that?

13 MR. LITVAK: I got it.

14 THE COURT: Good. Okay. Thank you.

15 Okay. Counsel?

16 MS. FOUNTAIN: Yes. We have worked out a stipulation  
17 whereby the Court will enter an order pursuant to Section 362(j)  
18 providing that the relief from – or the automatic stay does not  
19 apply to LSI Corporation and that the debtor may remain in  
20 possession of the premises to and including 12/31/07, assuming  
21 that the debtor will pay 150-percent rent, which is the  
22 hold-over rate that LSI is currently required to pay. In the  
23 event that LSI remains in possession after 12/31/07, the debtor  
24 may also remain in –

25 THE COURT: Wait.

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1 MS. FOUNTAIN: - possession -

2 THE COURT: Oh, I see. If LSI -

3 MS. FOUNTAIN: If LSI -

4 THE COURT: - is in possession...

5 MS. FOUNTAIN: - after 12/31/07, the debtor may also  
6 remain in possession up to the day that LSI vacates.

7 We would also request that this order issue a writ of  
8 possession upon the request of LSI in the event the debtor does  
9 not vacate on 12/31/07 or the date that the debtor or that LSI  
10 vacates.

11 THE COURT: What kind of notice do you need to give  
12 them that you're vacating after 12/31? I mean, if you all of a  
13 sudden pick up at three o'clock and vacate, you can't expect  
14 them to have vacated by 4:30 the same day. You need to give  
15 them some kind of - what's going to happen?

16 MS. FOUNTAIN: Certainly -

17 THE COURT: How is it going to work?

18 MS. FOUNTAIN: Sir, we can give the debtor three days'  
19 notice, as we would under state the law.

20 THE COURT: Okay. Is that okay?

21 MR. SACKS: Well, I think if this is going to go past  
22 12/31 we should probably have more notice than that. And I  
23 think they will know earlier than that. So maybe we can say  
24 December -

25 THE COURT: Seven days' notice? Is it -

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1 MR. SACKS: Given that that would make it the evening  
2 before Christmas, I was going to suggest December 15th.

3 THE COURT: No, no, no. You have until the end of the  
4 year.

5 And we're only talking about them vacating after the  
6 first of the year, aren't we?

7 MS. FOUNTAIN: Correct.

8 MR. SACKS: Right.

9 MS. FOUNTAIN: LSI intends to vacate on 12/31, but in  
10 the event that it does hold over longer.

11 THE COURT: Right. So we're not talking about  
12 Christmas at all.

13 MR. SACKS: Well, I —

14 THE COURT: Oh, you mean the notice would come  
15 Christmas?

16 MR. SACKS: What — right. What I was suggesting was  
17 that if they're going to be able to stay past December 31, if  
18 they are not giving up possession, that they would know that by  
19 the 15th of December and could give us notice by that date that  
20 they —

21 THE COURT: Do you think that's true, that by the 15th  
22 you'll know whether you're staying past the 31st?

23 MS. FOUNTAIN: Your Honor, —

24 THE COURT: You have this man pacing behind you.

25 MS. FOUNTAIN: — I don't know that that's true.

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1 THE COURT: I don't know that he's going to let you  
2 finish the hearing without knocking you over and trying to  
3 address the Court. But I'm just mentioning it, because I don't  
4 want it to get -

5 You obviously want to say something, Mr. Franklin.

6 MR. FRANKLIN: Yeah. LSI has every intention of being  
7 out of the premises by 12/31.

8 THE COURT: So they just want to know, so it's  
9 reasonable, if you're going to stay over, since they have the  
10 right to stay over, how they're going to know what you decided.

11 MR. FRANKLIN: I don't know how to do that. I mean, I  
12 think that it - by 12/15, I don't know whether they will be -  
13 will know whether they're going to be out or not. Their  
14 intention right now is to be out by 12/31.

15 THE COURT: Okay. But can't we say that you're going  
16 to be out by 12/31, but if you're not, you'll give them at least  
17 some minimum notice that they - that they can stay for these -  
18 whatever -

19 MR. FRANKLIN: Sure. And if we're not going to be  
20 out, we can give them notice, right.

21 MR. SACKS: That's all we're talking about.

22 MR. FRANKLIN: That's all they're talking about.

23 THE COURT: Yeah, all right. But we still haven't  
24 quantified the notice. We're still - I mean, as far as this  
25 conversation goes, you could tell them on 12/30, on New Year's

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1 Eve, "We're staying, we're staying."

2 Do you need a few minutes to talk, or –

3 MR. FRANKLIN: I just don't – I'm – I'm trying to  
4 conceive of what that situation would be. I mean –

5 THE COURT: You're not moved out, you're thinking –  
6 you need a little more time. People have –

7 MR. FRANKLIN: We're – we're a subtenant. We're a –  
8 sorry – we're a tenant; we're subleasing to the debtor.

9 THE COURT: I know.

10 MR. FRANKLIN: And I think Mr. Weissbrodt's client  
11 is –

12 THE COURT: I am Weissbrodt, he's Wiseblood.

13 (Laughter.)

14 THE COURT: We knew that would happen, didn't we, Mr.  
15 Wiseblood?

16 MR. WISEBLOOD: Your Honor, yes – yes, we did. It's  
17 nice to know that there's some consistency in our relationship.

18 MR. FRANKLIN: Nice to know I'm so predictable, too.

19 THE COURT: All right. Well, what do you say, Your  
20 Honor? What was your ruling?

21 Go ahead. So talk for five minutes among yourselves,  
22 and let me do my calendar, and then come back.

23 [COUNSEL]: Okay.

24 (The hearing was recessed at 11:03 a.m. and resumed at  
25 11:16 a.m. as follows:)



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1 THE COURT: Okay. Billing resource.

2 MS. FOUNTAIN: Robert Franklin and Jenny Fountain for  
3 LSI Corporation.

4 THE COURT: We're going to try again to see if he  
5 let's you go through with this.

6 That's not going to affect you one bit, Mr. Franklin.

7 MR. SACKS: Steven Sacks, Sheppard Mullin, for the  
8 debtor.

9 MR. LITVAK: Max Litvak for the Creditor's Committee.

10 THE COURT: Did you find out yet?

11 MR. LITVAK: Not yet.

12 THE COURT: You've had plenty of time.

13 MR. LITVAK: Not yet, Your Honor.

14 (Laughter.)

15 THE COURT: And there was an appearance on the phone?  
16 Was Mr. Wiseblood on this one, or no?

17 MR. SACKS: He was, but -

18 THE OPERATOR: He was.

19 THE COURT: Mr. Wiseblood?

20 THE OPERATOR: No, I just cut him off.

21 THE COURT: We're off the record.

22 (Off the record from 11:17 a.m. to 11:18 a.m.)

23 MR. WISEBLOOD: Still good morning, Your Honor.

24 THE COURT: Go ahead.

25 MR. WISEBLOOD: Still good morning, Your Honor. David

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1 Wiseblood for the owner. And I did get disconnected by your  
2 staff, perhaps. The absence of a black robe this morning, Your  
3 Honor.

4 THE COURT: I understand. Well, there's a little  
5 competition, you know, Mr. Wiseblood. They're -

6 MR. SACKS: Are you wearing a bathrobe, Mr. Wiseblood?

7 THE COURT: - very protective of the Court's  
8 jurisdiction.

9 MR. WISEBLOOD: Yes, Your Honor. I respect that, Your  
10 Honor.

11 THE COURT: All right. So my understanding is that  
12 you may have a deal?

13 MS. FOUNTAIN: Yes, I believe we do. So, as we were  
14 discussing earlier, the comfort order under Section 362, that  
15 the stay does not apply, the debtor will vacate on 12/31/07 or  
16 later, in the event that LSI is in possession of the premises  
17 after 12/31/07.

18 However, the debtor must vacate on the date that LSI  
19 vacates. A writ of possession to issue in the event that the  
20 debtor does not vacate. However, LSI will give five days'  
21 notice of the date that it will vacate the premises, so - five  
22 business days' notice.

23 So on 12/31, we'll give five business days' notice  
24 prior to that, and on a go-forward basis. The writ may execute  
25 upon the expiration of that five days. The -

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1 THE COURT: Assuming you're really out. You have to  
2 be out, because they have the right to stay as long as you're  
3 there.

4 MS. FOUNTAIN: Correct.

5 THE COURT: So the writ – you'd have to say – in your  
6 request for the writ, you have to say, "We're out, they're not."

7 MS. FOUNTAIN: And we gave the five-day –

8 THE COURT: And we gave the five-day notice?

9 MS. FOUNTAIN: Correct.

10 The debtor will pay the hold-over rent at 150 percent,  
11 plus the concomitant expenses, the triple-net lease, and all  
12 catch-up payments from past due arrearages from the expiration  
13 of the lease through termination at 12/31 will be made on  
14 December 1, 2007.

15 THE COURT: Is that your agreement?

16 MR. SACKS: It is, Your Honor, with the caveat that if  
17 we agree with the landlord on a lower rent rate, then we would  
18 pay that as opposed to the 150 percent.

19 THE COURT: Well, any contract is modifiable by the  
20 parties. So if you've made an agreement that's different from  
21 the – what you've recited on the record, then, of course, it  
22 would be binding.

23 MR. SACKS: Right. I'm just recognizing that LSI is a  
24 pass-through here. And the reason that we're setting the 150  
25 percent is that they are presently obligated to the landlord at

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1 150 percent. If we were –

2 THE COURT: Oh, I see.

3 MR. SACKS: – if we were able to modify that for our  
4 benefit on our space that the landlord, then LSI doesn't need a  
5 150 percent. So they're not intending to make a profit on the  
6 rent payment here.

7 THE COURT: And that's correct, isn't it?

8 MS. FOUNTAIN: That's correct.

9 THE COURT: Very good. Thank you. That will be fine.

10 Now who's preparing the order? I'd like both of you  
11 to sign off on it. It's not your standard order, so you both  
12 signed off – sign off on it.

13 MS. FOUNTAIN: We will prepare the order, Your Honor.

14 THE COURT: Very good. Thank you.

15 MS. FOUNTAIN: Thank you, Your Honor.

16 [COUNSEL]: Thank you very much, Your Honor.

17 THE COURT: Thank you. Court is adjourned. We're off  
18 the record.

19 (The hearing was recessed at 11:21 o'clock a.m. and  
20 continued at 2:07 o'clock p.m. as follows with all parties  
21 appearing telephonically:)

22 THE CLERK: This is the United States Bankruptcy Court  
23 for the Northern District of California. Court is now in  
24 session.

25 THE COURT: Good afternoon, ladies and gentlemen.

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1 This is the case of Billing Resource. And I'm going to take  
2 appearances of counsel in the order I have them. We'll start  
3 with Steven Sacks.

4 MR. SACKS: Yes, Your Honor Steven Sacks and Michael  
5 Ahrens, Sheppard Mullin, appearing for the debtor.

6 THE COURT: Walter Oetzell.

7 MR. OETZELL: Good afternoon, Your Honor. Walter  
8 Oetzell of Danning, Gill, Diamond & Kollitz, LLP, on behalf of  
9 David R. Chase, the Federal Receiver.

10 THE COURT: Collot Guerard?

11 MS. GUERARD: Collot Guerard, the Federal Trade  
12 Commission.

13 THE COURT: Maxim Litvak?

14 MR. LITVAK: I'm here, Your Honor.

15 THE COURT: Okay. John Fiero?

16 MR. FIERO: Good afternoon, Your Honor. John Fiero  
17 also for the Committee.

18 THE COURT: Stephen Warren?

19 MR. WARREN: Good afternoon, Your Honor. Stephen  
20 Warren of O'Melveny & Myers on behalf of Payment One.

21 THE COURT: John Singer?

22 MR. SINGER: John Singer on behalf of the Federal  
23 Trade Commission, here, Your Honor.

24 THE COURT: Neal Goldfarb?

25 THE OPERATOR: Your Honor, this is the operator. We

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1 still have no appearance for Mr. Goldfarb as of yet.

2 THE COURT: Michael Mora?

3 MR. MORA: Good afternoon, Your Honor. Michael Mora  
4 for the Federal Trade Commission.

5 THE COURT: Is there anybody else on the phone whose  
6 name I have not called?

7 (No audible response.)

8 THE COURT: Okay. Counsel, I have written a draft  
9 decision granting a preliminary injunction. I also have some  
10 concerns.

11 The argument that the Eleventh Circuit has before it  
12 now, the propriety of the Florida District Court's order before  
13 it, and that the Eleventh Circuit has granted and then lifted a  
14 stay. And that the argument that what the Eleventh Circuit does  
15 in terms of the stay issue is either identical to or very  
16 similar to what this Court would do in the context of issuing an  
17 injunction. Those arguments are not lost on me.

18 And so if I issued an injunction, we're going to  
19 become embroiled in appeals on that. And, frankly, there's not  
20 a lot of law out there on this issue. There is law on related  
21 issues.

22 Plus, in the meantime, I've done some more research  
23 and come up with a couple of cases that probably the parties  
24 should look at. One is *Bulldog Trucking*, 147 Fed.3d 347 Fourth  
25 Circuit. And it's 19. The last digit is 8, but I can't read

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1 whether it's 1958 or — no, it must be 1998 — I don't know. I  
2 don't have it — I can't read my digit.

3 And the other one is *Christopher Village versus United*  
4 *States* 360 Fed.3d 1319 Fed Circuit 2004.

5 MR. [SPEAKER]: Could you please repeat the last  
6 number, please, Your Honor? I'm sorry.

7 THE COURT: Yeah. *Christopher Village versus United*  
8 *States* 360 Fed.3d 1319 Fed. Circuit 2004.

9 MR. [SPEAKER]: Thank you, Your Honor.

10 THE COURT: And if I'm right that I have exclusive  
11 jurisdiction to what constitutes property of the estate, then  
12 those cases will be particularly instructive.

13 The other thing I've been looking at is 362(a)(3),  
14 which basically — and cases, too. And basically what that says  
15 is that even if something isn't property of the estate, if it's  
16 from the estate — and we'll talk about what that means in a  
17 minute — then the stay applies, and that the debtor can have a  
18 possessory interest in something, even if the other party has  
19 been adjudicated as owning it.

20 So just to give you a very simplistic example, if  
21 there has been prepetition litigation regarding the ownership of  
22 a car and the nondebtor party has been determined by a court to  
23 own the car, if the car is sitting in the debtor's lot, the  
24 debtor has a possessory interest in the car. The owner of that  
25 car, or the person who has a judgment saying they own the car

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1 can't come pick up the car without relief from stay from the  
2 Bankruptcy Court.

3 Now, I'm not -- I'm not doing anything more than  
4 raising some of these issues with you. I have real questions  
5 how the receivership action for contempt could possibly be part  
6 of the police or regulatory power exception to 362(b)(4), since  
7 I don't understand that the Government was a party to the  
8 contempt proceeding. So that's problematic.

9 But in any event, I have several options. And I'm  
10 considering these options. And as one party said to me the  
11 other day, "The Court has been blunt with us and direct with  
12 us." And I intend to go on doing that. And by "blunt," I don't  
13 mean any disrespect to you. It's just I basically want you to  
14 know where I am in terms of my thinking about the case. And I  
15 appreciate your being candid with me to the extent you feel it's  
16 appropriate.

17 I thought of issuing a preliminary -- I got the FTC's  
18 brief on the fact that the argument that it -- if I issue a TRO  
19 again, it's in effect a preliminary injunction, subject to  
20 appeal. So I'm aware of that argument.

21 And so one possibility would be, for example, to issue  
22 a preliminary injunction of limited duration and take it through  
23 December 14.

24 I've also considered whether I should abstain from the  
25 whole injunction question for the reasons that I articulated



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1 earlier and, that is, the Eleventh Circuit has the issue.

2 But what I was hoping to do today is to obviate the  
3 need for further litigation, at least for the indefinite future,  
4 by structuring an agreement whereby the funds would remain in a  
5 blocked account, the 1.7 that we've put in the blocked account,  
6 through this Court, not through anything the debtor did  
7 prepetition or postpetition, until we reached an agreement.

8 And the FTC and the Receiver have made it very clear  
9 that what they're concerned about is that I would unblock the  
10 funds and they wouldn't have time to appeal.

11 And the debtor presumably wants maximum flexibility to  
12 unblock the funds, if they need the funds. And to some extent  
13 those are mutually-exclusive goals.

14 But what I would suggest is that as of the present  
15 time the funds wouldn't get unblocked until a decision on  
16 December 7. And they wouldn't be unblocked before December 14,  
17 absent some, you know, enormous emergency.

18 And I was going to suggest that we work out some  
19 arrangement, pursuant to which the funds will remain blocked  
20 indefinitely, without prejudice to the debtor's ability to come  
21 back and ask them to be unblocked. And if they do make that  
22 request, it has to be on at least a week's notice to the FTC and  
23 to the Receiver.

24 And then I wouldn't, even if they screamed emergency,  
25 unblock them for a minimum of 10 days until after the hearing.

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1 So that's the FTC and the Receiver aren't going to be in any  
2 worse position. They'll be in a slightly better position than  
3 they are now.

4 Now, if we were able to agree to that, the funds would  
5 remain blocked and the FTC would have – and then the Receiver  
6 would have their respective goals of having the funds blocked  
7 and having time to get to an Appellate Court.

8 If I abstain, for example, then the debtor is going to  
9 be in a potentially-contempt posture almost immediately. If I  
10 issue a preliminary injunction of limited duration, then  
11 potentially the FTC is going to have much less time, although  
12 the FTC could appeal from the PI of a limited duration, I  
13 suppose. And I assume that's what they would do. Whether  
14 they'd find a court that was willing to hear it if the  
15 preliminary injunction was only going to last a couple of weeks.  
16 I don't know.

17 But my goal would be to structure something that  
18 served both of your interests. I, frankly, don't see the debtor  
19 needing these funds on an immediate basis. And it's not clear  
20 to me whether they're going to need them at all, depending on  
21 upon how, in particular, how the reorganization goes.

22 And when I say, "not need them at all," I mean not  
23 need them for ongoing business operations. I don't mean that  
24 the debtor would in any way give up its claim that those are  
25 property of the estate, that those funds are property of the

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1 estate. I just mean to need to use in an ongoing business  
2 sense.

3 And it seems to me that we ought to be able to work  
4 out a structure that served everybody's interest, with everybody  
5 having to give up something, some – you know, the debtor  
6 wouldn't have maximum flexibility. And the FTC wouldn't have a  
7 hundred-percent protection.

8 But if we could structure something that made you  
9 comfortable enough on both sides, that that would be an  
10 everybody's interest, more than me just deciding between one of  
11 these three options, PI until March, PI of limited duration,  
12 abstention, and then bringing in all these other problems,  
13 including the possibility that we'd be doing additional briefing  
14 on all of these issues, anyway, by the issues.

15 I've also taken a look at *Gruns*, the *Gruns'* case, but  
16 that was under *Rooker-Feldman*. And it deals with a state court,  
17 so I'm not sure that's going to be helpful. I'm not a hundred –  
18 I still don't understand, frankly, the argument that the  
19 District Court has jurisdiction – I'm sorry – that the FTC's  
20 action is a function of the police or regulatory power of the  
21 government, the FTC's consent proceeding. I don't understand  
22 that. But, in any event, if we can work something out, none of  
23 that would be litigated at this point.

24 Now let me start with the Receiver's side or the FTC  
25 side. But I don't know to whom I should address this question.

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1 And you're all in different cities. So if you want me to recess  
2 for ten minutes, and you can talk among yourselves, the debtor  
3 can talk to the Creditors' Committee.

4 One of the questions I have – and I still don't  
5 understand it – is whether the Creditors' Committee in Florida  
6 or in the Eleventh Circuit, filing briefs and, if not, why not?

7 It seems to me that if the Creditors' Committee thinks  
8 that debtor is correct, having its presence be shown as part of  
9 the bankruptcy, – you know, is having a very strong interest in  
10 the bankruptcy estate, it might be extremely helpful to that  
11 side of the picture.

12 But, in any event, – and I certainly understand that  
13 counsel for Payment One has input. And I don't see Ms. Diemer  
14 on the line. I assume we contacted her, but she's not on the  
15 line.

16 So, in any event, I'll do whatever you want, but I'd  
17 be glad to take a ten-minute recess. If people want to  
18 articulate what their positions are now, I'd be glad to hear  
19 that, too.

20 MR. SACKS: Your Honor, this is Stephen Sachs. It may  
21 be helpful if I go first. And so I would propose to do that for  
22 just a second.

23 We've been doing our analysis, obviously, as to  
24 whether we need immediate use of \$1.7 million. And our  
25 conclusion at this time is that, subject to working out an

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1 arrangement, as the Court is describing, being protected from a  
2 contempt proceeding and being able to go forward in this Court  
3 with an amended adversary complaint of which we would seek a  
4 ruling that this is, indeed, property of the estate, as well as  
5 property – but it doesn't matter at that point whether it's  
6 property from the estate, but I certainly agree with you that  
7 would be taking property from the estate, that we would agree to  
8 the proposal that the money remaining in the blocked account  
9 while that litigation is going forward and only come out if we  
10 gave notice as the Court has described. So essentially we're  
11 onboard.

12 What we'd like to do is get an agreement that we could  
13 amend our complaint. We would then most likely bring a summary  
14 judgment motion to establish that this is property of the  
15 estate, and everybody can litigate whether it is or it isn't.

16 And we would then only be releasing the money,  
17 hopefully, upon a final judgment, as opposed to having to  
18 litigate preliminary-injunction-type of issues here.

19 THE COURT: Counsel for the Receiver, Mr. Oetzell, you  
20 and Mr. Mora have been here most frequently. Just procedurally  
21 what do you want me to do? I'll ask Mr. Oetzell first and then  
22 Mr. Mora.

23 I'm only asking procedurally. I'm not asking you to  
24 do anything more than tell me whether you want me to recess for  
25 ten minutes, or what you want me to?

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1 MR. MORA: I would prefer recessing for ten minutes.  
2 Our client's on the East Coast. And, you know, it's the weekend  
3 before Thanksgiving and all that.

4 THE COURT: Well, but they're on the phone. Most –  
5 the lawyers are on the phone. All the lawyers who have appeared  
6 regularly, Ms. Guerard has appeared regularly and, of course,  
7 Mr. Mora.

8 But, anyway, – okay. So if I – and, by the way, if  
9 you'll agree that nothing gets done, we could have this hearing  
10 on Monday. It's not – there's no emergency, except for the  
11 emergency that's raised by the possibility of having to issue  
12 yet another injunction and, you know, having a one-day  
13 injunction be appealable becomes a little crazy. But I also  
14 understand the FTC's concerned about the clock ticking, and all  
15 of that.

16 So I'd be glad to recess. How long do you propose,  
17 Mr. Oetzell?

18 MR. OETZELL: Fifteen minutes would be fine.

19 THE COURT: That's fine. Okay. Is anybody opposed to  
20 a 15-minute recess?

21 (No audible response.)

22 THE COURT: So Gentner, or CourtCall? Operator,  
23 operator?

24 THE OPERATOR: Yes, Your Honor. I'm sorry.

25 THE COURT: Okay. Operator, put everybody back.

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1 They're going to all have their little, you know, little  
2 colloquies and discussions. And everybody needs to be called  
3 back. And we'll make it a quarter to 3:00.

4 THE OPERATOR: Yes, Your Honor.

5 THE COURT: Thank you, sir.

6 [COUNSEL]: Thank you, Your Honor.

7 THE COURT: Thank you.

8 THE OPERATOR: John and Collot, I'll call you. I have  
9 conference...

10 MS. GUERARD: All right. Let me give you...

11 (Proceedings recessed from 2:24 p.m. to 2:47 p.m.)

12 THE COURT: The Court is back in session.

13 Mr. Sacks, have you had an opportunity to talk your  
14 clients, or whatever you're doing?

15 MR. SACKS: Yes, Your Honor.

16 THE COURT: Okay. And, Mr. Mora, have you had an  
17 opportunity to talk your client?

18 And, Mr. Oetzell, the same?

19 But first Mr. Mora.

20 MR. MORA: Your Honor, we haven't had an opportunity  
21 to talk to our client. But the attorneys caucused amongst  
22 ourselves. And we are prepared to explain to the Court what  
23 we're prepared to do today.

24 THE COURT: Very good. Okay. So why don't we start  
25 with you, Mr. Mora? Are you the spokesperson, or is Mr.

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1 Oetzell?

2 MR. MORA: I'm counsel for the Federal Trade  
3 Commission, Your Honor.

4 THE COURT: I'm sorry. What?

5 MR. MORA: It is Mr. Mora, like in –

6 THE COURT: Fine. I'm just asking whether you'd  
7 agreed that you'd have a particular spokesperson?

8 MR. MORA: Yes. Mr. Oetzell represents the Receiver.

9 THE COURT: No, I know that. I understand that.

10 MR. MORA: Okay.

11 THE COURT: But I –

12 MR. SINGER: Your Honor, we – Your Honor, this is John  
13 Singer. We didn't have a chance to confer with Mr. Oetzell. I  
14 don't know if Mr. Mora did, but I don't think we –

15 MR. OETZELL: Yes, I did, John.

16 MR. SINGER: Okay. I apologize, then.

17 THE COURT: Okay. So, Mr. Mora, you're on deck.

18 MR. MORA: Thank you, Your Honor.

19 Your Honor, it's really – in this short timeframe,  
20 this was quite unexpected. Frankly, we expected to, you know,  
21 have a ruling read into the record today. So I'm –

22 THE COURT: Yes. Well, that's what I told you I was  
23 going to do, until I had my Deputy call you and say we were  
24 going to have this conversation.

25 MR. MORA: Understood. So the most we can consent to



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1 today amongst ourselves, is we would agree to, notwithstanding  
2 our position, that we believe that the temporary restraining  
3 order expires on the 25th, which is Sunday, we would agree to  
4 consent to treat the temporary restraining order currently in  
5 effect as continuing in effect through the close of business on  
6 Monday, so that we would have a chance to, frankly, confer with  
7 our clients on responding to Your Honor's suggestion.

8 THE COURT: Oh, I see. Okay.

9 Well, Mr. Sacks, is that good for you? Shall we have  
10 a hearing on Monday?

11 MR. SACKS: We can have a hearing on Monday, Your  
12 Honor.

13 THE COURT: Yeah. I have – I can – I can hear you on  
14 Monday. It's no problem. Let me just look at my calendar.  
15 Yes, I have an Inns-of-Court meeting at noon. But we can meet  
16 either – you know, you're not going to have much time, because  
17 tomorrow is the last bus- – no, today is the last business day  
18 before Thanksgiving. So maybe it would be best if we did it in  
19 the afternoon like 1:30-ish, or 2:00?

20 MR. SACKS: That would be –

21 THE COURT: That way you'd have the morning.  
22 Otherwise, I don't know how much time you're going to have to  
23 consult with...

24 (End of the recording at 2:49 o'clock p.m.)

25 –o0o–

State of California                                 )  
  )       SS.  
County of San Joaquin                             )

I, Susan Palmer, certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages, of the digital recording provided to me by the United States Bankruptcy Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I further certify I am not a party to nor in any way interested in the outcome of this matter.

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Dated December 4, 2007